



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

[REDACTED]

PRELIMINARY RECITALS

Pursuant to a petition filed June 30, 2015, under Wis. Stat. § 49.45(5)(a), to review a decision by the Brown County Human Services in regard to Medical Assistance (MA)/BadgerCare Plus (BCP), a hearing was held on July 28, 2015, at Green Bay, Wisconsin.

The issue for determination is whether the Department correctly discontinued the petitioner's BCP effective April 1, 2015.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED]
Brown County Human Services
Economic Support-2nd Floor
111 N. Jefferson St.
Green Bay, WI 54301

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Brown County.
2. The petitioner had an open BCP case for two persons prior to April 2015. Her case was due for an annual renewal in March 2015. When that renewal was not completed on time, the agency

correctly discontinued the petitioner's BCP case effective April 1, 2015. Notice of the BCP discontinuance was given on March 18, 2015. This hearing request is outside of the 45-day time limit for appealing the April 1 discontinuance.

3. The petitioner later completed the renewal in April, which was treated as a new application. That BCP application was denied by a notice dated April 23, 2015, due to excess income. This hearing request is outside of the 45-day time limit for appealing from the April 23 notice.
4. The petitioner's eligibility for BCP was again considered on May 28. The Department issued a notice on May 29, 2015, denying a May 28 application, due to excess income.
5. During the renewal process, the petitioner provided her 2014 federal income tax return. The return showed that the petitioner received payouts from an inherited IRA during 2014, with those payments totaling \$43,903. *See*, Exhibit 2, tax return. The Department assumed that the petitioner would continue with this level of withdrawals annually. The 12-month average for \$43,903 is \$3,658, which made the household financially ineligible for BCP.
6. From January 1 through June 30, 2015, the petitioner withdrew \$17,500 from the IRA. When divided by six months, the average amount exceeds the BCP adult income limit for both two and three person households.

DISCUSSION

BadgerCare Plus is a Wisconsin variant of the MA program, for non-elderly, non-disabled Wisconsin residents. The program's nonfinancial eligibility standards were broadened effective April 1, 2014, to include adults who do not have minor children in their home. Wis. Stat. § 49.45(23); *BadgerCare Plus Eligibility Handbook (BCPEH)*, § 2.1, at <http://www.emhandbooks.wisconsin.gov/bcplus/bcplus.htm> (viewed in March 2015). The petitioner meets the nonfinancial eligibility tests for the program.

The petitioner must also pass an income test. An eligible adult applicant cannot have adjusted gross income exceeding 100% of the federal poverty level (FPL). Wis. Stat. § 49.45(23)(a); *BCPEH*, § 16.1. The 100% FPL amount is \$972.50 monthly for a household of one, \$1,310.83 for a household of two, and \$1,674 for three persons in 2015. *Id.*, § 50.1.

From gross income, the Department is allowed to subtract only those income tax deductions listed on lines #23 - #35 of the federal 1040 tax return, subject to modifications listed at 42 C.F.R. § 435.603(e). The petitioner did not identify any of these adjusted gross income deductions as being applicable here.

The petitioner questioned the use of her 2014 IRA withdrawals as ongoing income in 2015. The Department's policy language on treatment of IRA withdrawals is as follows:

Other income is any payment that the member receives from sources other than employment. Unless it is disregarded income, count the gross payment in the person's income total.

1. **Unemployment Compensation (UC)** - Count UC

...

Money from Another Person is money a person receives which is not repayment for goods or services the person provided and is not given because of a legal obligation on the giver's part. This is not a loan.

Under *MAGI* rules, count money from another person as income in the month received only if it meets either of the following criteria:

- Income from a bequest, devise or inheritance
- Income generated from property given to a trust if the income is paid, credited or distributed to the individual

...

10. **Retirement Benefits** - Retirement benefits include work-related plans for providing income when employment ends (e.g. pension disability or retirement plans administered by an employer or union).

Other examples of retirement funds include accounts owned by the individual, such as Individual Retirement Accounts (IRA) and plans for self-employed individuals, sometimes referred to as KEOGH plans.

Under *MAGI* rules, count the taxable portion of any retirement distribution as unearned income.

BCPEH, § 16.5 (11/20/14).

The petitioner's contention is that, although she made withdrawals totaling \$17,500.00 so far in 2015, she will not make additional 2015 withdrawals. Therefore, the argument goes, the income should no longer be attributed to her. She submitted an affidavit in which she declares that she will make no further withdrawals in 2015. Exhibit 3, affidavit of 7/28/15. On the other hand, the petitioner's credibility is not high, as she did not report to the Department in 2014 or earlier in 2015 that she was receiving this income.

From January 1 through June 30, 2015, the petitioner withdrew \$17,500 from the IRA. When divided by six months, the average exceeds the adult monthly income limit for either two or three persons (at this July hearing, the petitioner advised that she is in her second month of pregnancy). Thus, even based on the pace of withdrawals that actually occurred in 2015, the petitioner was not eligible for BCP through June 2015. The 2015 monthly average of \$2,916 in IRA withdrawal money also put the petitioner's child over the 200% FPL limit for children, for a household of two (\$2,655). When the petitioner's daycare income is added in, the household stays over the 200% FPL children's limit for a household of three. Thus, denial of the BCP application on May 29, 2015, was correct.

I note that as of July 27, 2015, the IRA account balance was \$10,872. *See*, Exhibit 4, Baylake statement. Thus, the petitioner clearly cannot continue to withdraw \$2,916 every month for the rest of 2015, as the fund will run out. Normally, my suggestion to the petitioner would be to file a new BCP application and assert that she has stopped making IRA withdrawals, if that is actually the case. However, in reviewing the Department's notice issuance history database, it appears that the petitioner is now open effective July 1, 2015 for a variant of BCP for pregnant women, and that BCP is also open for her child. Thus, it is possible that a new application may not be necessary.

CONCLUSIONS OF LAW

1. The petitioner's June 30 hearing request was not timely for the purpose of contesting either her April 1, 2015, BCP discontinuance, or the April 23, 2015 BCP denial, per Wis. Stat. § 49.45(5).
2. The petitioner's household income exceeded the relevant limit for BCP eligibility through June 2015.
3. The Department correctly denied the petitioner's BCP prior to July 2015.

THEREFORE, it is

ORDERED

That the petition is dismissed.



REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

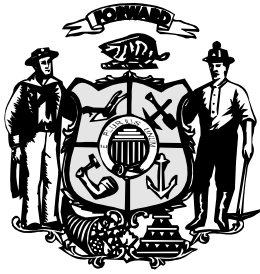
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 17th day of August, 2015

\sNancy J. Gagnon
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on August 17, 2015.

Brown County Human Services
Division of Health Care Access and Accountability